[NOT REPORTED]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.338 OF 2002.

Parshuram alias Dada Vitthal]
Pawar, aged 22 years, Occu -]
Labourer. R/o.Rahjuri. Tal -] Appellant.
Phaltan, Presently lodged at] (Org.Accused)
Kolhapur Central Jail.]

v/s.

1] State of Maharashtra]
2] State of Maharashtra]
(At the Instance of]
Phaltan Police Station)] Respondent.

Mr.R.Satyanarayanan for the appellant.
Mr.A.M.Shringarpure, APP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 23rd August 2004.

JUDGMENT

1. Heard advocate for the accused/appellant and learned APP for the State. This is an appeal

filed by the accused challenging his conviction under Section 376 of the Indian Penal Code by which he is sentenced to suffer R.I. for seven years and to pay a fine of Rs.1000/- in default R.I. for 3 months and also convicted under Section 323 of the Indian Penal Code and is sentenced to suffer R.I. for one month and to pay a fine of Rs.100/0 in default to suffer R.I. for seven days and also convicted under Section 506 of the Indian Penal Code and is sentenced to suffer R.I. for three months and to pay a fine of Rs.500/- in default to suffer R.I. for 15 days.

2. Victim in this case is a married woman Sushila Vasant Chougule. She was living with her husband; two sons namely Mangesh and Subhash and daughter Sunita. She was serving as a Anaganwadi Sevika. The accused was knowing her and she was also knowing him because he was residing in front of her house.

3. The incident occurred on 11.1.2000. After returning from a school at 2.00 p.m. and at about 3.30 p.m. she went to the field of Abasaheb Pawar for bringing the grass to her

goat. She saw Mahadeo Shingade and Hirabai Shingade going by Bund of the adjoining field. At about 4.30 p.m., while she was cutting the grass, the accused came there and he had a motorcycle chain. The victim questioned the accused why he was standing there. Thereupon the accused told her that the victim's daughter Sunita had deceived him twice. When further questioned by the victim, the accused touched her neck. The victim called Mahadeo Shingade twice but he did not turn up and went ahead. Thereafter the accused placed the motorcycle chain on the ground and pressed her mouth. The victim resisted and gave a blow to the accused by a sickle. Then accused took the chain and hit the victim on her left hand index finger. There was scuffle between the accused and the victim. And thereafter the accused committed rape upon her and also threatened her with death if she would disclose the incident anybody.

4. The victim returned to her home and disclosed the incident to her husband as well as to Baburao Gavade. Immediately report was lodged with the police at about 19.35 p.m. and the offence was registered. The victim was sent for

medical examination. Investigation was thoroughly carried out. Samples were sent to C.A. and the accused came to be arrested on 20.9.2000. Semen, blood, pubic hair and nails of the accused were also sent to the C.A.

5. It is in this background the accused came to be prosecuted. The prosecution has examined 11 witnesses. The defence of the accused was of total denial and false implication. Further, according to the accused, P.W.7 Vasant Chougule had misbehaved her sister. Therefore, there was a quarrel between the accused and P.w.7 and this case is the result of the said quarrel.

6. The trial Court believed the case of the prosecution, because according to the trial Court, the victim's evidence i.e. Sushila Chougule (PW 2) corroborated by immediate disclosure to her husband (PW 7). On way they met one Baburao Gavade (PW 3) and to him this incident was also narrated and then they went to the police station and lodged the report. There was consistency in the evidence of the victim. She was supported by medical evidence. There was abrasion on the left hand and blood clot was

present. The age of the injury was 24 hours and Dr.Prabhakar Bhoite opined that the injury was possible by motorcycle chain. The clothes of the victim were sent to the C.A. and, C.A. report Exhibit 14 shows that semen stains were there on the middle of petticoat. Similarly there were blood stains on the saree of the victim. Counsel for the accused contended that even though the victim was immediately examined by P.W.8 Prabhakar Bhoite, no injuries were found on the private part of the victim and, therefore, the medical evidence does not support the case of rape. He also contended that the injury on left hand of the victim could be caused while she was cutting the grass. However, Dr.Prabhakar Bhoite in para 7 has stated that absence of physical violence itself does not mean that sexual intercourse has not been committed forcibly. As rightly observed by the trial Court, the victim was a married woman of about 35 years of age and, therefore, the injuries to the private part were not necessary, when she had no reason to falsely implicate the accused; secondly, she lodged the FIR immediately without any delay; thirdly she went home and narrated the incident to her husband; fourthly both of them while proceeding

to the police station narrated the incident to P.W.3 Baburao Gavade; fifthly the semen stains were found on the petticoat and the petticoat was seized from her which fact is proved by the police and the panchas.

7. Counsel for the accused contended that if the victim was raped in a agricultural land, there ought to have been injuries on her back. Exhibit 11 the panchanama shows that place of rape was in a agricultural land. It was 20 ft. inside the field from the southern bund. Jwar crop was not very thick at that place; grass appear to have been cut from that place which is consistent with the case of the victim that she was cutting the grass in between the jwar crop and, the panchanama further shows that the crop was bent and distorted. Nothing is there in the panchanama to show that it was hard surface to point out so as to cause injuries on the back portion of the victim. Therefore, absence of injuries on the back side of the victim does not in any; way hit the prosecution case.

8. The most important thing in this case is that in the cross examination of the victim the

defence has not been able to shake her credit at all or create doubt or suspicion about her testimony. She was cross examined at length but without any success. It was also contended by the counsel for the accused that as per the admission of victim, there are houses on the road between her house and agricultural land where she was working and while returning she could direct the incident to anybody. This suggestion cannot be accepted. Because a woman who is raped is not supposed to shout or tell everyone that a rape has been committed upon her. The victim returned to her house and narrated the incident to her husband. Therefore, absence of narration to others who might be present in their house does not affect the veracity of the witness at all.

9. The counsel for the accused also contended that the story of the victim that she gave a call to Mahadeo Shingade and his wife is not supported by Mahadeo. It is true that Mahadeo that at about 4.00 p.m. on 11.2.2000 he and his wife were going to his land by the bund on foot and he did not listen anybody’s call. Mahadeo Shingade may have reason not to support the victim. But that does not affect the

credibility. There was no reason for the victim to name Mahadeo Shingade in her report. It might be that the victim gave a call to Mahadeo Shingade but Mahadeo did not hear it.

10. The evidence of victim's husband also fully supported the case of the victim and the victim was fully justified in narrating the incident to her husband. Panchanama of recovery of articles viz. clothes of the victim; panchanama of scene of offence; report of the C.A. have been all properly proved by the prosecution. There is absolutely no defect or lacuna in the prosecution case. The offences have been proved beyond shadow of doubt. Therefore, there is no merits in this appeal. The appeal is dismissed.

[D.G.DESHPANDE]

23.08.2004 JUDGE.

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